THE HONOURABLE SRI JUSTICE

B.SESHASAYANA REDDY

WRIT PETITION NO. 6332 OF 2005

DISPOSED OF ON 15-09-2005

BETWEEN:

SMT.PULI LALITHAMMA … PETITIONER

AND

THE ASST.DIRECTOR OF MINES AND

GEOLOGY, KURNOOL DISTRICT.

AND OTHERS ….RESPONDENTS.

THE HONOURABLE SRI JUSTICE

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O R D E R :

1 . This Writ Petition has been filed by Smt.Puli Lalithamma seeking a writ of mandamus declaring the inaction of respondents in passing appropriate orders on the representation submitted by her and two others on 18.2.2005 for cancellation of the mining quarry lease granted in respect of land admeasuring Ac.3-50 in Sy.No.284, 285 of Palukuru village, Banaganapalli Mandal, Kurnool District as illegal, arbitrary and unconstitutional.

2. The petitioner is daughter of Gundam Pakir Reddy. She and her two sisters filed a suit for partition and separate possession of their shares against their brother Gundam Venkata Ram Reddy, 4th respondent. She along with her two sisters submitted a representation to 1st respondent for cancellation of the mining quarry lease granted in favour of 4th respondent. Since no action has been initiated on the said representation, the petitioner has filed this writ petition.

3. It is stated in the counter affidavit filed by 4th respondent that the petitioner filed O.S.No.202 of 2004 on the file of Principal Senior Civil Judge, Nandyal and she also moved I.A.474 of 2004 for issue of temporary injunction restraining him and his agents from carrying mining operations in the suit schedule property pending disposal of the suit. It is further sated that no orders have been passed on the said application. I deem it appropriate to refer para 3 of the counter affidavit and it is thus:

> " 3. The petitioner has suppressed the filing of I.A.No.474 of 2004 pending before the Civil Court, Nandyal and no order have passed so far. The petitioner is not entitled to invoke the jurisdiction of this court under Article 226 after having filed a suit for the same relief which is pending before competent civil court. I am herewith filing the written statement filed by me in O.S.No.202 of 2004 and my counter filed in I.A.No.474 of 2004. It is again submitted the disputed question of fact relating to title cannot be adjudicated in the writ petition under Art.226."

4. When the vacate stay petition came up for hearing, with the consent of both the parties the writ petition itself is taken up for hearing. Heard learned counsel for the petitioner and learned counsel appearing for 4th respondent.

5. Learned counsel appearing for the petitioner submits that the petitioner and her two sisters have shares in the property and if 4th respondent is permitted to quarry the minerals from the family lands, the interests of the petitioner and her sisters over the lands are likely to be prejudiced and thus the representation submitted by the petitioner to the 1st respondent is required to be considered. Learned counsel appearing for 4th respondent submits that the petitioner and her two sisters have filed suit for partition and also mesne profits and in which case their representation before the 1st respondent for cancellation of mining and quarry lease is only to prevent the 4th respondent to enjoy the lease hold rights of minor minerals.

6. It is no more in dispute that the petitioner and her two sisters have filed the said suit for seeking partition and separate possession of their shares. On perusal of the prayer made in the said suit, it is clear that the petitioner along with her two sisters also claimed mesne profits. Such is the situation, the representation submitted before the 1st respondent for cancellation of the lease in favour of 4th respondent is only to nullify the licence granted in favour of 4th respondent. This is purely a civil dispute between the parties and there is no public law element warranting invocation of jurisdiction of this court under Art.226 of the Constitution of India. For the above reasons, this writ petition is devoid of merits and the same is hereby dismissed. No costs.

Dated: 15-09-2005. (B.Seshasayana Reddy,J)

tnb

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